

YONG TECK LEE

A

v.

HARRIS MOHD SALLEH & ANOR

FEDERAL COURT, PUTRAJAYA

B

JAMES FOONG FCJ

[CIVIL APPLICATION NO: 08-46-2002 (S)]

12 MAY 2009

CIVIL PROCEDURE: *Costs - Taxation - Getting-up fee - Respondent's costs for applicant's unsuccessful leave application in Federal Court - Refusal of Deputy Registrar of Federal Court to revise amount awarded - Application to a Judge of Federal Court for review - Court will interfere with decision of taxing officer only if discretion exercised based on some wrong principle or quantum allowed is obviously wrong - Failure by Deputy Registrar to consider relevant facts and drawing of wrong inferences - Amount awarded manifestly inadequate and grossly insufficient - Whether getting-up fees in leave application to Federal Court not to be equated to costs awarded for getting-up in interlocutory application filed in High Court - Whether sum of RM100,000 fair and reasonable compared to RM16,000 awarded*

C

D

E

The applicant and the respondents were candidates in a Sabah State election for the constituency of Likas. The applicant was declared the winner and the respondents filed election petitions to challenge the result. The election judge found that the applicant had committed an election offence and declared the election result null and void. The Court of Appeal by majority dismissed the applicant's appeal. The applicant's application to the Federal Court for leave to appeal was refused. The respondents then applied to tax their costs incurred in opposing the leave application in the Federal Court. The Deputy Registrar of the Federal Court awarded the respondents RM16,000 as getting-up fees against a claim of RM400,000. The Deputy Registrar refused to revise the amount awarded and hence this application to a judge of the Federal Court to review the decision of the Deputy Registrar pursuant to O. 59 r. 36(1) Rules of the High Court 1980 ('RHC') which is applicable to the Federal Court by virtue of r. 3 of the Federal Court Rules 1995. In holding that RM16,000 was sufficient as getting-up fees, the Deputy Registrar held that the burden in the leave application was more on the applicant to convince the court that he had satisfied the requirements in s. 96(a) of the Courts of Judicature Act 1964. The Deputy

F

G

H

I

- A Registrar also held that there was only one issue before the Federal Court *ie*, whether the decision of an election judge was appealable and that this issue was not novel since a long line of cases have decided in the negative.
- B **Held (allowing the application and revising the costs awarded to RM100,000)**
Per James Foong FCJ:
- C (1) The court will not interfere with the decision of a taxing officer upon a mere question of quantum if the taxing officer has exercised her discretion after due consideration of all circumstances and if no question of principle arises. It is only when such discretion has been exercised based on some wrong principle or the quantum allowed is obviously wrong that a judge will interfere. (para 16)
- D (2) When there is no certainty of success in the outcome of any litigation, equal demand is made on counsel from each side of their skill, knowledge and research to argue a point in favour of their client. One cannot say that the demand for these
- E qualities from one party is greater than the other. Each has to meet the challenges mounted by the other. The respondents were faced with a formidable team led by a silk who specialized in constitutional law. Thus, it was not unreasonable to expect a relative output of quality from the counsel
- F engaged by the respondents to match this. Further, the respondents' counsel also had to rebut the view of the dissenting Judge of the Court of Appeal. (para 32)
- G (3) Though there may be a series of consistent decisions on this one issue if it can be proved that they are uniformly wrong then this might be sufficient to justify leave to be granted by the Federal Court to appeal. (para 34)
- H (4) The Deputy Registrar failed to give due prominence to the importance of the cause or matter to the client. The applicant was an elected representative of the State Assembly of Sabah. One respondent was a former Chief Minister of Sabah and the other, an ex-Senator. The decisions of the Election Court, if upheld, would have far reaching consequences. The cause or
- I matter weighed heavy consequences to the respondents and formed an important and relevant factor for consideration when determining the amount of getting-up fees. (para 36)

- (5) The Deputy Registrar failed to consider relevant facts and on those she did, drew wrong inferences from them. The amount she awarded was manifestly inadequate and grossly insufficient. In an application for leave to appeal to the apex court of the land, getting-up fees should not be equated to costs awarded for getting-up in an interlocutory application filed in the High Court. There should be some degree of gravity and importance attached to the filing of an application in the Federal Court even though it is for leave to appeal. (para 37)

Bahasa Malaysia Translation Of Headnotes

Pemohon dan responden-respondeen adalah calon-calon dalam pilihanraya Negeri Sabah bagi kawasan pilihanraya Likas. Pemohon telah diisytiharkan sebagai pemenang dan responden-respondeen telah memfailkan petisyen bagi mencabar keputusan. Hakim pilihanraya mendapati bahawa pemohon telah melakukan satu kesalahan pilihanraya dan dengan itu mengisytiharkan keputusan pilihanraya sebagai tak sah dan batal. Mahkamah Rayuan, melalui satu keputusan majoriti, telah menolak rayuan pemohon. Permohonan pemohon ke Mahkamah Persekutuan untuk kebenaran merayu juga telah ditolak. Responden-respondeen kemudian memohon untuk mentaksir kos yang mereka tanggung ketika menentang permohonan kebenaran di Mahkamah Persekutuan. Berikutan itu, Timbalan Pendaftar Mahkamah Persekutuan mengawarkan RM16,000 sebagai fee penyediaan guaman, walaupun permohonan responden-respondeen adalah untuk jumlah RM400,000. Timbalan Pendaftar juga enggan menyemak jumlah yang diawarnya. Ini membangkitkan permohonan kepada seorang Hakim Mahkamah Persekutuan di sini di bawah A. 59 k. 36(1) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'), yang terpakai kepada Mahkamah Persekutuan berdasarkan k. 3 Kaedah-Kaedah Mahkamah Persekutuan 1995, bagi menyemak semula keputusan Timbalan Pendaftar. Dalam memutuskan bahawa RM16,000 adalah mencukupi sebagai fee penyediaan guaman, Timbalan Pendaftar memutuskan bahawa tanggungan beban semasa permohonan kebenaran adalah lebih banyak dipikul oleh pemohon, iaitu bagi membuktikan bahawa kehendak-kehendak s. 96(a) Akta Mahkamah Kehakiman 1964 telah dipenuhi. Timbalan Pendaftar juga memutuskan bahawa hanya terdapat satu sahaja isu di hadapan Mahkamah Persekutuan, iaitu sama ada keputusan seorang hakim pilihanraya boleh dirayu dan bahawa isu tersebut bukanlah sesuatu yang baru kerana terdapat banyak kes yang telah pun menjawabnya secara negatif.

**A Diputuskan (membenarkan permohonan dan menyemak
award kepada RM100,000)
Oleh James Foong HMP:**

- B (1) Mahkamah tidak akan campurtangan dengan keputusan
seorang pegawai taksir semata-mata atas persoalan kuantum
jika pegawai taksir itu telah melaksanakan budibicaranya
dengan mengambilkira semua halkeadaan dan jika tiada
persoalan prinsip berbangkit. Seseorang hakim akan hanya
campurtangan jika budibicara tersebut dilaksanakan berdasarkan
prinsip yang salah atau jika kuantum yang dibenarkan itu amat
jelas salahnya.**
- C (2) Bilamana tiada kepastian mengenai keputusan sesuatu litigasi,
maka peguam di kedua-dua belah pihak adalah sama-sama
bertanggungungan untuk mempamerkan kepakaran, pengetahuan
dan penyelidikan mereka bagi menghujahkan sesuatu point
untuk anakguam mereka. Tiada siapa pun boleh mengatakan
bahawa tuntutan bagi kebolehan-kebolehan ini dari satu pihak
adalah melebihi dari pihak yang lain. Setiap mereka harus dapat
menjawab cabaran-cabaran yang ditampilkan oleh pihak lawan.
Di sini, responden-responden berhadapan dengan satu pasukan
guaman yang hebat yang diketuai seorang peguam utama yang
pakar dalam undang-undang perlembagaan. Oleh itu, bagi
menangkis hujah mereka, bukanlah tidak munasabah untuk
menjangkakan bahawa peguam responden-responden juga harus
mengemukakan hujah-hujah bernas dan berkualiti. Selain itu,
peguam responden-responden juga perlu menangkis dapatan
menentang hakim Mahkamah Rayuan.**
- D (3) Walaupun terdapat beberapa keputusan yang konsisten
terhadap isu yang satu ini, namun, jika kesemuanya dapat
dibuktikan sebagai silap, maka itu mungkin memadai untuk
mewajarkan Mahkamah Persekutuan memberikan kebenaran
untuk merayu.**
- E (4) Timbalan Pendaftar telah gagal memberi keutamaan sewajarnya
kepada soal betapa pentingnya kausa atau halperkara
berkenaan kepada anakguam. Pemohon adalah seorang wakil
rakyat dipilih dalam Dewan Undangan Negeri Sabah. Seorang
responden adalah bekas Ketua Menteri Sabah, sementara
seorang lagi adalah bekas Senator. Keputusan Mahkamah
Pilihanraya, jika dipertahankan, akan mempunyai kesan yang**
- F**
- G**
- H**
- I**

mendalam. Kausa dan halperkara mempunyai akibat-akibat mendalam ke atas responden-responden dan ini adalah suatu faktor penting dan relevan dalam menentukan jumlah fee penyediaan guaman. A

- (5) Timbalan Pendaftar telah gagal menimbang fakta-fakta relevan, manakala berhubung fakta-fakta yang dipertimbangkan beliau, inferens-inferens salah telah dibuat mengenainya. Jumlah yang beliau awardkan jelas amat tidak memadai dan tidak mencukupi. Dalam suatu permohonan untuk kebenaran untuk merayu ke mahkamah tertinggi negara, fee penyediaan guaman tidak seharusnya disamakan dengan kos bagi penyediaan guaman bagi suatu permohonan interlokutori di Mahkamah Tinggi. Haruslah wujud suatu tahap keutamaan dan kemustahakan dikaitkan kepada pemfailan permohonan ke Mahkamah Persekutuan, walaupun ia cuma untuk suatu kebenaran untuk merayu. B
C
D

Case(s) referred to:

Bar Council v. Datuk V Kanagalingam [2000] 3 CLJ 697 FC (*refd*)
Datuk Syed Kechik Syed Mohamed & Anor v. The Board of Trustees of the Sabah Foundation & Ors [1999] 1 CLJ 325 FC (*refd*) E
Pang Kok v. Leong Fock Hap & Anor [1997] 1 CLJ Supp 232 HC (*refd*)
White v. Altrincham Urban District Council [1936] 1 All ER 923 (*refd*)

Legislation referred to:

Courts of Judicature Act 1964, s. 96(a)
 Election Offences Act 1954, ss. 11(1)(c), (d), 32, 36, 37 F
 Federal Constitution, art. 121(1B)
 Rules of the Federal Court 1995, r. 3
 Rules of the High Court 1980, O. 59 rr. 34, 36(1)
For the applicant - Tuan Hj Ansari Abdullah; M/s Ansari & Co
For the respondents - Alex Decena (Datuk John Sikayun with him); M/s Luping & Co G

[Editor's note: *For the Court of Appeal judgment, please see Yong Teck Lee v. Harris Mohd Salleh & Anor* [2002] 3 CLJ 422.]

Reported by Amutha Suppayah H

JUDGMENT

James Foong FCJ:

Introduction I

[1] The deputy registrar of the Federal Court has refused to review her own decision where she awarded only a sum of RM16,000 to the respondents for getting-up fees against a request for RM400,000 in the respondents' Bill of Costs.

A [2] Dissatisfied with this, the respondents filed this summons-in-chambers to a judge of the Federal Court to review the decision of the deputy registrar pursuant to O. 59 r. 36(1) Rules of High Court 1980 (RHC) which is applicable to the Federal Court by virtue of r. 3 of the Federal Court Rules 1995.

B [3] Order 59 r. 36 RHC says:

C (1) Any party who is dissatisfied with the decision of the Registrar to allow or to disallow any item in whole or in part on review under rule 34 or 35, or with the amount allowed in respect of any item by the Registrar on any such review, may apply to a Judge for an order to review the taxation as to that item or part of an item, if but only if, one of the parties to the proceedings before the Registrar requested the Registrar in accordance with rule 35 (3) to state the reasons for his decision in respect of that item or part on the review.

D **Background Of The Case**

E [4] The background of this case is this: The applicant and both the respondents were candidates in a Sabah State election held on 13 March 1999 for the constituency of Likas. After the election, the appellant was declared the winner. Both the respondents were dissatisfied with this outcome. They respectively filed election petitions to challenge the result. Both the election petitions were consolidated and heard by the election judge, F Justice Muhamad Kamil. After 28 days of staggered trial, the election judge ruled that the applicant had committed an Election Offence under s. 11(1)(c), 11(1)(d) and s. 32 of the Election Offences Act 1954, in respect of the first petition (K5). He accordingly declared the election result for this constituency null and void.

H [5] In respect of the second petition (K11), having come to a conclusion that the electoral roll for the said constituency contained names of non-citizens and disqualified persons, the said judge also declared that the election result for this constituency null and void.

I [6] Upon these decisions, a certificate and a report required under s. 36 and 37 of the Election Offences Act were issued to announce that the applicant is not returned as an elected representative to the State Assembly of Sabah for the constituency of Likas.

[7] Dissatisfied with this decision, the applicant filed an appeal to the Court of Appeal challenging the decisions of the Election Court. Further, in view of the effect of the certificate and report issued by the Election Court which requires the Election Commission to hold a by-election within a specific time, the applicant applied for and obtained an order to stay the execution of the Election Court's orders pending an appeal to the Court of Appeal.

A

B

[8] On 6 June 2002, the Court of Appeal by majority (with Justice KC Vohrah dissenting) dismissed the applicant's appeal on the ground that a decision of the Election Court is not appealable.

C

[9] Refusing to accept this decision, the applicant on 1 July 2002, filed an application to the Federal Court for leave to appeal against the decision of the Court of Appeal. Pending the disposal of this leave application to the Federal Court, the applicant obtained an order to stay the effect of the Election Court's decisions.

D

[10] On 3 September 2002, the applicant's leave application to the Federal Court was heard. His application was refused.

E

[11] By 23 April 2003, the respondents had filed their Notice of Taxation and Bill of Costs for costs incurred in opposing the applicant's leave application in the Federal Court.

[12] On 20 August 2003, the deputy registrar of the Federal Court handed down to the respondents a sum of RM16,000 as getting-up fees against a claim of RM400,000.

F

[13] Dissatisfied with this, the respondents applied to the deputy registrar of the Federal Court to review her own decision under O. 59 r. 34 RHC which again is applicable by virtue of r. 3 of the Federal Court Rules 1995.

G

[14] On 15 February 2006, the deputy registrar refused to revise the amount awarded; hence this application before me.

H

Approach

[15] I feel the need at the outset to lay down the approach regarding this sort of application.

I

[16] First, it is well established that the court will not interfere with the decision of a taxing officer upon a mere question of quantum if the taxing officer has exercised her discretion after due

A consideration of all circumstances and if no question of principle arises. It is only when such discretion has been exercised based on some wrong principle or the quantum allowed is obviously wrong that a judge will interfere – see *Pang Kok v. Leong Fock Hap & Anor* [1997] 1 CLJ Supp 232.

B [17] An elaboration of this proposition is found in *White v. Altrincham Urban District Council* [1936] 1 All ER 923 where Slesser LJ said:

C In my opinion, the judge had no power to disturb the discretion of the registrar expressly given him by the rule on a mere question of quantum unless the registrar has purported to exercise that discretion in a way not warranted by law. That such a view had long been held in proceedings in the High Court cannot be disputed. In *Alsop v. Lord Oxford* [1833] 1 My & K 564 at pg. 566, Sir John Leech, MR, said:

D Generally speaking, the decision of the master on taxation is final: he is the sole judge of the fact whether the business had been done, and of the proper charge to be made for it; the court will only interfere where the master acts upon some mistaken principle.

E [18] And for the latest, Justice Chong Siew Fai (CJ Sabah & Sarawak) in the Federal Court case of *Bar Council v. Datuk V Kanagalingam* [2000] 3 CLJ 697 concluded:

F On the authorities, it is clear that in exceptional cases where it can be shown that wrong principle was applied, or there is some other material error, the Judge upon review can set aside or amend the award on quantum.

G **Principles Applied By The Deputy Registrar**

H [19] In her written grounds, the deputy registrar discloses: “Suffice to say as a taxing officer, I’m guided by the principles laid down in taxation proceedings and also consideration spelt out in note item 26 and item 27 Appendix 1 Part V, Scale of Costs of the Rules of High Court”.

I [20] I believe there is a typographical error when the deputy registrar referred to Part V of Appendix 1 of the Scale of Costs of the RHC in respect of item 26 and 27. These are actually found in Part IV of Appendix 1 and not Part V.

[21] And item 26 and 27 of this Part IV state:

A

26 Instructions for trial or hearing of any Discretionary
cause or matter, whatever the mode
of trial or hearing

27 Instructions for appeal from interlocutory Discretionary
or final order or judgment

B

Note to items 26 and 27:

These items are intended to cover the doing of any work, not otherwise provided for, necessarily or properly done in preparing for a trial, hearing or appeal, or before a settlement of the matters in dispute, including:

C

(a) Taking instructions to sue, defend, counterclaim or appeal, or for any pleading, particulars of pleading, affidavit, preliminary act or claim in a reference under Order 70 rule 39;

D

(b) Considering the facts and law;

(c) Attending on and corresponding with client;

E

(d) Interviewing and corresponding with witnesses and potential witnesses and taking proofs of their evidence;

(e) Arranging to obtain reports or advice from experts and plans, photographs and models;

F

(f) Making search in a Government Office and elsewhere for relevant documents;

(g) Inspecting any property or place material to the proceedings;

(h) Perusing pleadings, affidavits and other relevant documents;

G

(i) Where the cause or matter does not proceed to trial or hearing, work done in connection with the negotiation of a settlement; and

H

(j) The general care and conduct of the proceedings.

[22] In her conclusion, the deputy registrar declared: "Lastly, bearing in mind the principles as set out in s. 1(2) of Appendix 1, Part X of O. 59 Rules of High Court 1980 and the principle in the various cases referred to me by both counsels for the

I

A respondents and applicant I am of the view the amount of RM16,000 awarded as getting-up fees in this leave application is a fair and reasonable amount.

[23] For enlightenment, Part X referred to provides:

B **1 Discretionary costs**

C (1) Where in the foregoing provisions of this Appendix there is entered in the second column against any item specified in the first column either an upper and a lower sum of money or the word “Discretionary”, the amount of costs to be allowed in respect of that items shall (subject to any order of the Court fixing the costs to be allowed) be in the discretion of the Registrar, within the limits of the sums so entered, if any.

D (2) In exercising his discretion under this paragraph or under rule 31(2) in relation to any item, the Registrar shall have regard to all relevant circumstances, and in particular to:

E (a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;

(b) the skill, specialized knowledge, and responsibility required of, and the time and labour expended by, the solicitor or counsel;

F (c) The number and importance of the documents (however brief) prepared or perused;

(d) The place and circumstances in which the business involved is transacted;

(e) The importance of the cause or matter to the client;

G (f) Where money or property is involved, its amount or value;

H (g) Any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

Reason Of The Deputy Registrar

I [24] Having set out the principle relied on by the deputy registrar, I shall now disclose the reasons proffered by her for her decision.

[25] In maintaining her decision that a sum of RM16,000 is sufficient as getting-up fees, the deputy registrar argued that before “the Federal Court is a mere leave application” and, the burden was more on the applicant to convince the Federal Court that he has complied with the requirements set out in s. 96(a) of the Courts of Judicature Act. The deputy registrar then repeated that “The uphill task was in fact on the applicant and not the respondents”.

A

B

[26] In rebutting the submission of the respondents on the issue of complexity and novelty and the requirement of special knowledge, skill and extensive research to contest the applicant’s application for leave in the Federal Court, the deputy registrar said that it “was the applicant who has to do extensive research to enable him to submit to the court (Federal Court) and convince the court on the operation of s. 36 of the Election Offences Act 1954”.

C

D

[27] In fact, she insisted that there was only one issue before the Federal Court, and that is whether the decision of an election judge is appealable, and according to her, this issue is not novel since a long line of cases has persistently decided in the negative.

E

[28] Regarding the contention of the respondents that the parties in this case are prominent personalities and that the case was of public importance, the deputy registrar’s commented that “this is just one of the factors the court should consider, however it is not the only factor to consider”.

F

Analysis

[29] When considering this review, I believe it necessary to touch briefly on the requirement of s. 96(a) of the Court of Judicature Act 1964. This section provides:

G

Subject to ... any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal, an appeal shall lie from the Court of Appeal to the Federal Court with the leave of the Federal Court ...

H

- (a) from any judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction (involving a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage; or ...)

I

- A [30] An elaboration of this is found in *Datuk Syed Kechik Syed Mohamed & Anor v. The Board of Trustees of the Sabah Foundation & Ors* [1999] 1 CLJ 325 where Justice Edgar Joseph Jr. (FCJ) said:
- B To sum up, without prejudice to the generality of what we have thus far said, the Federal Court exercises its sensitive power to grant leave to appeal in a civil cases sparingly and will not grant such leave unless both of the following criteria are satisfied by an intending appellant:
- C (1) The judgment of the Court of Appeal has raised a point of general principle which the Federal Court has not previously decided or a point of importance upon which further argument and a decision of the Federal Court would be of public advantage; and
- D (2) If the point is decided in favour of the intending appellant, there is a *prima facie* case for success in the appeal.
- E [31] So what the deputy registrar is stressing is that the demand for this special knowledge, skill and extensive legal research was more on the applicant rather than the respondents for it was incumbent upon the applicant to convince the Federal Court that he had crossed the threshold set out in s. 96(a) of the Courts of Judicature Act.
- F [32] I am afraid that the deputy registrar has taken a lopsided view of this. When there is no certainty of success in the outcome of any litigation, equal demand is made on counsel from each side of their skill, knowledge and research to argue a point in favour of their client. One cannot say that the demand for these qualities from one party is greater than the other. Each has to meet the challenges mounted by the other. And in this instance, the respondents were faced with a formidable team led by a silk who specializes in constitutional law. Thus, it is not unreasonable to expect a relative output of quality from the counsel engaged by the respondents to match this. Further, there was also the demand on the respondents' counsel to rebut the view of the dissenting judge of the Court of Appeal. This contrary opinion would naturally be seized upon by the applicant to convince the Federal Court into granting leave. So it is incorrect, in my opinion, for the deputy registrar to infer that the respondents were 'home and dry', so to speak, in this application as compared to the applicant. Viewed against these facts, the
- G
- H
- I

demand of a lower degree of skill, special knowledge and legal research of counsel for the respondents is therefore baseless and unsustainable. A

[33] Another pertinent factor singled out by the deputy registrar for her consideration was the existence of a single issue before the Federal Court compared to a multiple of issues. According to her, even on this sole issue of whether the decision of the Election Court is appealable, there is already a long line of authorities against the applicant. B

[34] Regrettably, this is a somewhat narrow approach. Though there may be a series of consistent decisions on this one issue if it can be proved that they are uniformly wrong then this might be sufficient to justify leave to be granted by the Federal Court to appeal. Support for this proposition is found in the Federal Court case of *Datuk Syed Kechik Syed Mohamed v. The Board of Trustees of the Sabah Foundation & Ors* (*supra*): C D

But, if an intending appellant could demonstrate that the judgment of the Court of Appeal raises a point of law of great general importance upon which there has been a consistent current of judicial opinion which may have been uniformly wrong, that may well be enough for leave to be granted. *Fisher v. Oldham Corp* [1930] 2 KB 364 was a case where the question at issue was one of great importance to the public and illustrates how 'a line of authorities' may gradually grow in the wrong direction because one important precedent has escaped attention. E F

[35] In this particular instance, the appellant was attempting to convince the Federal Court that due to the creation the Court of Appeal under art. 121(1B) of the Federal Constitution, a decision of the Election Court is not absolute; it is appealable. This novel and complex point has never been decided in previous cases. Thus this single issue may be accepted by the Federal Court to grant leave. Viewed from this perspective, it is my opinion that the deputy registrar has erred in her observation. G

[36] Another factor that the deputy registrar failed to give due prominence is the importance of the cause or matter to the client (see item (e) of Part X in the Appendix 1, of the Scale of Costs of the RHC). Though the deputy registrar admitted that this is one of the many factors to be considered she failed to give significance to it. In this case the applicant, an elected representative of the State Assembly of Sabah, was challenged by two candidates of substance who took part in the same election. H I

- A The first was a former Chief Minister of Sabah and the other, an
ex-Senator. The decisions of the Election Court, if upheld, have
far reaching consequences. For the applicant, it means not only
vacating his seat in the State Assembly but also disqualification
from participating in an election for five years. And for the
B respondents and general public, particularly those electorates in the
Likas constituency, there will be a new election. So the cause or
matter weigh heavy consequences to the respondents and forms
an important and relevant factor for consideration when
determining the amount of getting-up fees.

C **Conclusion**

- [37] For reasons expressed above, I conclude that the deputy
registrar has failed to consider relevant facts in this case and on
those she did, drew wrong inferences from them. The amount she
D has awarded is manifestly inadequate and grossly insufficient based
on the facts before her. I was informed by counsel appearing
before me that the getting-up fees for the respondents at the
Election Court was RM80,000 and, at the Court of Appeal was
about RM100,000 for the 1st respondent and RM50,000 for the
E 2nd respondent. Now the respondents are seeking RM400,000. I
think this is excessive. The amount to be varied must of course
be in accordance with the guidelines set out under the rules but
certainly in an application for leave to appeal to the apex court of
the land, getting-up fees should not be equated to costs awarded
F for getting-up in an interlocutory application filed in the High
Court. There should be some degree of gravity and importance
attached to the filing of an application in the Federal Court even
though it is for leave to appeal. Otherwise, anyone dissatisfied with
any decision of the Court of Appeal will proceed to file such
G application with the hope that if granted would have another
chance to argue his case for only a minimal sum as costs if
rejected. Application for leave to appeal to the Federal Court must
be taken seriously and anyone who attempts this must ensure that
their matter falls within the criteria of s. 96 of the Courts of
H Judicature Act. For this, detail study and preparation is necessary
and this applies equally to those opposing. For such respondents'
efforts, I am of the view that a sum of RM100,000 is a fair and
reasonable amount for getting-up fees. Accordingly, I revised the
costs awarded to the respondents from a modest sum of
I RM16,000 to RM100,000.
-